

These minutes are a summary of the discussion. The audible recording is available at the following website: <http://bit.ly/T3S7CB>

Planning & Zoning Commission Meeting
Minutes of December 4, 2013
1st Floor North Conference Room - City Hall

Present: Chairman Jeremy Goldstein, Vice-Chair Holly P. Shriner, Kristy Carter, Nathaniel Cannady, Jim Edmonds and Joe Minicozzi

Absent: Jane Gianvito Mathews

Pre-Meeting - 4:30 p.m.

The Commission discussed technical aspects of several items on the agenda. There were several questions about the rezoning on Robinhood and Beaverbrook. Due to construction noise the pre-meeting adjourned early.

Regular Meeting - 5:00 p.m.

Chairman Goldstein called the meeting to order at 5:00 p.m. and informed the audience of the public hearing process.

Administrative

- Mr. Minicozzi moved to approve the minutes of the November 6, 2013, meeting, with amendments. This motion was seconded by Ms. Carter and carried unanimously by a 6-0 vote.

Agenda Items

- (1) **A request for the review of a Level II plan for the construction of a 50,200 ft grocery store building and associated site work on 14.27 acres located at 1832 Hendersonville Road. The property is identified as PIN 9655-17-6378. The property is owned by Skyland Crest, LLC, the developer is White Development Company and the project contact is Jim White. Planner coordinating review – Julia Fields.**

Urban Planner Julia Fields oriented the Commission to the site location and said the application is a site plan for a Level II review of property located at 1832 Hendersonville Road to allow for the construction of 99,200 square feet of retail space including a 50,200 square foot grocery store.

She said the project site is 14.27 acres in size and currently contains retail structures totaling 139,800 square feet that are to be demolished. Approximately 80.5 percent (11.5 acres) of the site is currently impervious. The site is approximately 25 feet in elevation higher than Hendersonville Road. The project site does not include the three adjoining outparcels (two occupied) to the west, adjacent to Hendersonville Road.

The applicant has submitted a site plan for a retail center of 99,200 square feet. Phase I of this development will be a 50,200 square foot grocery store with construction proposed to begin in early 2014. The grocery store will be one story in height – 24 feet. For planning purposes, Phase II is shown as 49,000 square feet of additional retail space. The details for this phase will be submitted for further review at a later time. Impervious surface area on the site will be reduced by 6 percent (.8 acre) upon completion of the full development.

Access to the site is via three existing points off of Hendersonville Road which will remain. Two of these access points are signalized. There will also be driveway access to the adjacent Gerber Village development. Existing parking will be demolished and replaced with 437 new parking spaces.

The property owner held an informational meeting with representatives of the Crowfields community (diagonally across Hendersonville Road). Staff attended the meeting and the response to the proposed development seemed favorable.

This project was reviewed at the November 4, 2013, meeting of the Technical Review Committee and approved with conditions. As this is a Level II review, it will not be reviewed by the Asheville City Council.

The staff believes this project to be compatible with the surrounding uses. To the north and west the property is zoned Highway Business and contains retail uses. To the east the property is zoned Industrial and contains warehouse, industrial, and consulting/management uses. To the south, the property is zoned Community Business II, and is the location of Gerber Village, a retail, office, and restaurant center.

This project supports the goal of providing opportunities for the location of large commercial uses within the City in areas adequately served by public services, particularly transportation.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Staff recommends approval subject to the conditions listed in the TRC report and the following standard conditions: (1) All site lighting must comply with the City's lighting ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of final development plans; (2) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (3) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards.

In response to Ms. Carter, Mr. Chris Day, representing Civil Design Concepts, said that the site plan does not show the handicapped parking spots until Phase II. They will be close to the doors.

In response to Vice-Chair Shriner, Mr. Day explained the handicapped pedestrian route to the bus stop on Hendersonville Road.

Mr. Day spoke about their excitement on this project. He said they meet a lot of the City's goals in terms of redevelopment of an existing shopping center with existing utilities and infrastructure.

Mr. Minicozzi said that the Planning & Zoning Commission is talking about future land use planning in the Mills Gap Road area, among other areas. The 2025 Comprehensive Plan calls for allowing more density in this area. He wondered if there was anything from the property owner's prospective that the Commission should take into account. Mr. Rusty Pulliam, property owner, explained there are over 1400 units being planned in the near future in that area and felt that the area will be overbuilt with multi-family.

Chairman Goldstein opened the public hearing at 5:16 p.m. and when no one spoke, he closed the public hearing at 5:16 p.m.

Based on the above findings and the analysis provided in the report, Mr. Cannady moved to recommend approval of the 50,200 ft. grocery store building and associated site work at 1832 Hendersonville Road, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's lighting ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of final development plans; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Chairman Goldstein and carried unanimously by a 6-0 vote.

- (2) Request to rezone a portion of a property fronting Robinhood Road, Beaverbrook Road, and Beaverbrook Court from RS-2 Residential Single-Family Low Density District to RS-4 Residential Single-Family Medium Density District. The owner is Sherwood Heights, Inc. and the agent is Scott C. Best. The property is identified as PIN 9740-39-7418. Planner coordinating review – Blake Esselstyn.**

Urban Planner Blake Esselstyn oriented the Commission to the sites and said that the applicant is requesting a rezoning for a portion of property off Robinhood Road from RS-2 (Residential Single-Family Low Density) district to RS-4 (Residential Single-Family Medium Density) district.

The subject property is approximately 13 acres (of which approximately 11 are in the City's jurisdiction) of vacant, wooded land. The parcel overall has an average natural slope of about 42%, with elevations from 2,390 to 2,550 feet above sea level, putting it in the most restrictive category of the UDO's steep slope development regulations. The lot has frontage on Beaverbrook Court, Beaverbrook Road, and Robinhood Road. Several small streams run through the property.

The applicant has requested a standard rezoning from RS-2 (Residential Single-Family Low Density) district to RS-4 (Residential Single-Family Medium Density) district, which is the predominant zoning classification to the south and east of the subject property, in order to achieve marginally higher density.

In their 2013 session, the North Carolina General Assembly voted to remove the City's ETJ, resulting in a removal of RS-2 zoning from properties to the southwest of the subject site. These areas are currently unzoned.

As mentioned above, a majority of the subject parcel's area is in the City's corporate limits; however, the northern and western tips are in the Town of Woodfin. Other nearby properties to the north and west are either zoned by the Town of Woodfin, or not zoned at all, in the case of former City of Asheville extraterritorial jurisdiction area at the terminus of Beaverbrook Road.

Along the southern and eastern boundaries of the subject property, most of the adjacent zoning is RS-4, and the adjacent lots are developed with single-family homes on lots averaging roughly 0.8 acres in size. At the northeast corner, there is an area of RS-2 zoning.

To the north and west, there is a large vacant property owned by the same corporation that owns the subject parcel, and a single-family home on a four-acre lot, owned by the President of said corporation. Part of the single-family house lot is zoned RS-2, but most of the zoning in this area is the Town of Woodfin's "Mountain Village" zoning district. To the southwest, there are

seven single-family residential lots (six are developed) that are in unincorporated Buncombe County and are unzoned.

Owing to the steep slope classification mentioned above, the currently allowed residential density is much lower than the two units per acre one might expect in a flatter, lower elevation setting of RS-2 zoning. The regulations limit density to 0.1 units per acre, meaning that the minimum average lot size in a new subdivision would be 10 acres. As such, the applicant can't currently subdivide the 13-acre parcel.

The allowed density in RS-4 zoning at this slope and elevation, by contrast, is 0.2 units per acre, which would allow for a new subdivision with minimum average lot sizes of 5 acres, and in this case, would permit the 13-acre parcel to be divided into two single-family house lots.

It is important to note that the amount of grading allowed would remain substantially unchanged, regardless of the zoning district. Only 15% of the site would be allowed to be graded; in other words, at least 85% of the land area would need to remain undisturbed, whether the property is developed as one lot or two. Further, the steepness of the terrain would require that development applications be accompanied by geotechnical analysis to address the higher risk of slope failure in this setting.

Since the adoption of the revisions to the steep slope ordinance in 2007, staff has not typically been supportive of requests to "up-zone" properties in sensitive steep slope areas, especially those that are "Zone B" and in the steepest slope category. Staff has some concern that such action could be viewed as a precedent inviting other such requests or as a perceived weakening of the City's stance on such environmental protections.

This particular parcel, however, does stand out as unlike many of the other steep slope properties in RS-2 zoning. The majority of its boundary is adjacent to higher-density zoning, and there is established higher-density development on two of the roads on which the parcel has frontage. The rezoning, if it were approved, would still require the applicant to create parcels significantly larger than the existing house lots on two sides. Much of the area to the west and north is in different jurisdictions, where the zoning (or lack thereof) would even allow high-density multifamily development.

Were the zoning change to be approved, a narrow sliver of RS-2 zoning would remain on an adjacent parcel on Robinhood Road (lot 1371), but this split-zoning situation has existed on the neighbor's lot for at least eight years. Were it to become problematic for the property owners, staff feels it would not be difficult to resolve, as the vast majority of that lot is already zoned RS-4.

The Asheville City Development Plan 2025 supports special treatment for sensitive areas and steep slopes that should be treated with caution during development, which could be viewed as contrary to the applicant's request. A different perspective, however, would cite the plan's recommendation that "areas within the existing urban fabric that are vacant should be targeted for compatible infill development that takes advantage of existing infrastructure" to support the rezoning as compatible with the higher-density surroundings.

The proposed rezoning would neither support nor hinder the goals of the Strategic Operating Plan 2013-2014.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Staff is loath to support a change to higher-impact zoning in high-elevation areas with over 40% slope. However, the rezoning would not increase the amount of land disturbance allowed. Since the property in question is flanked by almost twenty parcels developed with single

family homes, all but one of which is less than two acres in size, staff feels an argument can be made for allowing two house lots averaging 6.5 acres in size – in the name of compatibility.

When Mr. Cannady asked if there was any requirement of the placement of the two homes, Mr. Esselstyn said that if the lot was subdivided into two lots, one lot could be significantly larger than the other lot. If people are clustering development at lower elevations, in less sensitive areas, staff has allowed for smaller lot size - since the average minimum lot size is 5 acres.

Mr. Minicozzi asked if someone could build in the northern and western tips that are in the Town of Woodfin. Mr. Esselstyn said that it is outside the City's jurisdiction, but imagined that development would be allowed in those areas.

When Chairman Goldstein asked how the City's steep slope ordinance would apply to the tips outside the City's jurisdiction, Mr. Esselstyn said that the ordinance would only apply to the property in the City of Asheville's jurisdiction.

Mr. Scott Best, attorney representing Sherwood Heights Development, said that the applicant is proposing a 5 acre tract and an 8 acre tract. They are trying to turn a 13 acre tract into something that can be subdivided into two tracts, with one home in each tract.

Mr. Minicozzi asked that Mr. Best be aware that on the Buncombe County GIS site there is a Debris Flow Map to see potential landslides. Mr. Best said that this property has been in the Coleman family for 70 years and they have taken an active role in the development once their property is sold.

Chairman Goldstein opened the public hearing at 5:32 p.m.

The following individuals were opposed to the rezoning, mainly due to water runoff, damage to existing roads, and noise:

Mr. Douglas Haldane, resident on Brookwood Road

An area resident

Mr. Larry Hamilton, area resident

Mr. Terry Lee, resident on Brookwood Road

Chairman Goldstein closed the public hearing at 5:39 p.m.

Chairman Goldstein noted that the applicant has the right to build one home on the property now and if this rezoning were approved and a second home be allowed, it would not increase the area of disturbance that is currently allowed.

When Mr. Edmonds asked what steps the developer will take to control water runoff, Mr. Best said that he has not seen the engineering reports yet. He said that for the past two-three years, the developer has a good track record of controlling the water runoff.

In response to Vice-Chair Shriner, Mr. Esselstyn noted that in single-family zoning districts they allow for accessory structures but they are limited in size.

In response to Mr. Cannady, Mr. Best said that the roads into the proposed two lots would come off of Beaverbrook Road from the Town of Woodfin jurisdiction.

Mr. Minicozzi said that looking at the topography maps and the runoff areas, a lot of the existing neighborhood wouldn't meet the qualification of the steep slope areas. The proposed rezoning is significantly less density than the existing context.

Based on the above findings and the analysis provided in the report, Chairman Goldstein moved to recommend approval of rezoning a portion of property fronting Robinhood Road, Beaverbrook Road and Beaverbrook Court from RS-2 Residential Single-Family Low Density District to RS-4 Residential Single-Family Medium Density District. This motion was seconded by Mr. Edmonds and carried unanimously by a 6-0 vote.

At 5:51 p.m., Chairman Goldstein called for a 5 minute recess.

(3) Ordinance amending Chapter 7 of the Code of Ordinance regarding changes to conditional zoning applications and conditional use permits to require that any approved ordinances be recorded with the Buncombe County Register of Deeds

Director of Planning & Development Judy Daniel said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regarding changes to conditional zoning applications and conditional use permits to require that any approved ordinances be recorded with the Buncombe County Register of Deeds.

The UDO currently requires that upon adoption, the Planning Department will keep records of all adopted ordinances modifying the UDO. For conditional zoning ordinances, the UDO also requires that the city zoning map will be amended. For Conditional Use Permits and Conditional Zonings, ordinances that impose specific limits on individual properties, these changes and conditions are currently not easy to find for the general public. The proposed change will add a requirement that the property owner will record the ordinance and conditions of the approval at the Buncombe County Register of Deeds, cross-referencing the applicable property deed. This change will allow those who are seeking information on a specific property to easily see the limits imposed on the property.

The Planning Department will continue to keep records of the ordinances, but this action will provide the public with an easily accessible means to determine what requirements and restrictions are tied to any approved conditional zoning in the city.

This has been an issue of concern to the public as, due to space constraints, the Planning Department records usually do not include the full contents of the approved plans attached to the ordinance records, which are filed sequentially. Such files are eventually moved to long term storage which may take some time to retrieve. While this situation may be relieved over time as use of more advanced software will allow improved access, it will be helpful to have a backup means of access to this information in the county records; which are already accessible online.

We cannot go backwards because it is cost prohibitive. A parallel action is underway to provide easier means to locate pertinent ordinances of past approved CUPs and CZ through creation of a cross-referenced file kept in the Planning Department. Over time, as we go to more sophisticated software tools, people will be able to click on the GIS map and obtain that information.

This action will not create a substantial expense for the property owner, and will provide greater transparency to the general public. Staff research with the Register of Deeds has revealed that most actions will cost less than \$50 to file (a small percentage will be higher depending on the complexity of the conditions). Further, a review of other cities in North Carolina has revealed that this is not an uncommon requirement. Real estate professionals are among those who most frequently ask for this information as they need to understand any limiting requirements on properties they are working with to buy or sell. Nearby residents are also among those interested in this information, as the zoning maps only say that the property has this zoning, and do not provide the limiting conditions.

These changes affect Section 7-5-5(c)(3) (Information Required for Conditional Use Plan Submittal), Section 7-5-5(e)(3)(b) (Formal review by City Council for Conditional Use Approvals), and Sections 7-7-8(d) (1) and (8) (Application procedures for Conditional Zoning).

Since this change increases transparency regarding regulatory limits on specific properties, staff believes the proposal to comply with the Asheville City Development Plan 2025 in that it works toward Goal IV of the Economic Development section related to insuring compatibility between local infrastructure and regulatory environment and the needs of business and industry.

Staff believes the proposal to comply with the City Council's Strategic Plan Focus Area 1: Economic Growth and Financial Sustainability in that it creates a more transparent regulatory environment for potential investors as noted in the "Job Growth" section which notes the need for UDO analysis and recommendations.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Staff recommends approval of this proposed change as it will provide the public with a more accessible means of determining the conditions imposed by the Council in granting approval of conditional use permits and conditional zonings.

When Ms. Carter asked what the intent of this amendment would be, Chairman Goldstein that it would be marketability of the property. Mr. Minicozzi said that it would also be useful when someone is interested in purchasing in a neighborhood.

Mr. Edmonds felt that eventually all maps should be on-line and a person should be able to click a piece of property and it would tell the zoning with the conditions attached. Ms. Daniel said that is a long-term goal, but would not happen in the next 3-5 years, due to the work required to go back in time. She felt this is a way to start resolving a problem in the short-term that is not cost prohibitive.

In response to Mr. Edmonds, Ms. Daniel said that the property owner is the responsible party for recording the ordinance with the list of conditions attached at the Register of Deeds. They cannot get a building permit until staff sees that documentation.

Mr. Edmonds said that the Register of Deeds does not index by streets or Parcel Identification Numbers - they index by the person's name. Ms. Daniel said that the information required on the conditional use permit and conditional zoning ordinance must contain the pertinent deed number of the subject property with book and page reference from the Buncombe County Register of Deeds.

Mr. Edmonds was uncertain if it was worth going through this process in the short-term or concentrate on getting that information on the property card and/or getting software to allow a person to click on a piece of property and tell the zoning, with any conditions attached.

When Chairman Goldstein asked how a person would find out the information at this time, Ms. Daniel said they would have to come to the Planning Department. Now it would be put in the public realm.

Ms. Daniel said that staff will continue to build the master file to provide easier means to locate pertinent ordinances of past approved CUPs and CZ through creation of a cross-referenced file kept in the Planning Department. She also noted that this had strong support of the Coalition of Asheville Neighborhoods.

Chairman Goldstein opened the public hearing at 6:11 p.m., and when no one spoke, he closed the public hearing at 6:11 p.m.

Based on the above findings and the analysis provided in the report, Ms. Carter moved to recommend approval of an amendment to Chapter 7 of the Code of Ordinances regarding changes to conditional zoning applications and conditional use permits to require that any approved ordinances be recorded with the Buncombe County Register of Deeds. This motion was seconded by Vice-Chair Shriner and carried on a 5-1 vote, with Mr. Edmonds voting "no."

(4) Ordinance amending Chapter 7 of the Code of Ordinances regarding changes to Board of Adjustment procedures and rules

Associate City Attorney Jannice Ashley said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regarding changes to Board of Adjustment procedures and rules in accordance with a new law passed by the North Carolina General Assembly.

She said that in this year's legislative session, the General Assembly passed session law 2013-126 entitled "An Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustment", effective October 1, 2013, which resulted in a number of modifications to N.C. G.S. sec. 160A-388, the statute which governs the composition, duties and procedures of Boards of Adjustment. This was the first major re-write of this statute since its original inception in the early 1920's and in staff's opinion, the clarifications provided by this new law were necessary and should prove helpful to the administration of board of adjustment matters. The amendments are also applicable to other boards and commissions, such as Planning & Zoning commission, when acting as a board of adjustment pursuant to section 7-5-9.1 of the UDO. Though many of the City's UDO provisions related to board of adjustment procedures, such as notification requirements and hearing conduct, are already consistent with the standards and procedures in this new law, some amendments do need to be made.

These changes affect Section 7-3-3 Board of Adjustment, subsection (c)(2) Meetings and Voting and subsection(e) Administering Oaths and Issuing Subpoenas; Section 7-6-1 Variances, subsection (a) Purpose, subsection (c) Applications, subsection (d) Action by the board of adjustment, and subsection (e) Standard of Review; Section 7-6-2 Appeals of Administrative Decisions, subsection (c) Persons who may file an appeal, subsection (d) Filing of an Appeal, and (e) Action by the board of adjustment; Section 7-5-20 Notices and Public Hearings, subsection (b) Notice procedure; and Section 7-13-9 Sign Variances.

The major modifications or clarifications of session law 2013-126 that have an impact on the current UDO provisions can be summarized as follows:

- Regarding Appeals Process (UDO sections 7-3-3 and 7-6-2):
 - Appeals of zoning decisions must be filed with the city clerk (currently file with planning director or board secretary)
 - Appeals must be taken within 30 days of date of decision (currently ordinance provides for appeal to be taken as required by the Board of Adjustment Rules of Procedures, which in turn, currently allows 60 days to appeal)
 - Appeal may be made by a person who has standing as defined by statute (previously appeal could be made by any "aggrieved party" which had no exact definition)
 - Clarification that only an appeal of a notice of violation or other enforcement order shall stay all proceedings in furtherance of the contested action. An appeal of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay further review of the application.

- Regarding Standards for Granting Variances (UDO section 7-6-1 and section 7-13-9):
 - Removes the requirement that variance may not be granted unless *no reasonable use* of the property without the variance
 - Removes the reference to consideration of *practical difficulties*
 - Provides that applicant may qualify for variance *even though applicant purchased property knowing of its limitations and possible need for a variance*
- Regarding Board Decisions and Voting Requirements (UDO sections 7-3-3 and 7-6-2):
 - Appeals of zoning decisions and special and conditional use permits are granted upon majority vote (previously, a 4/5 vote was required. 4/5 vote still required for granting of a variance)

Ms. Ashley noted the following additional amendment: After a decision has been made at the Board of Adjustment, the property owner needs to post the decision on his own property within 30 days after the decision.

Staff believes the proposed changes to generally comply with the Asheville City Development Plan 2025 in that they provide greater clarity for the public in regard to board of adjustment procedures.

Staff believes the proposed changes to generally comply with the City Council's Strategic Plan in that they provide greater clarity for the public in regard to board of adjustment procedures

Staff recommends approval of these proposed changes as they will make the UDO provisions regarding board of adjustment procedures consistent with the new State law.

Commission members asked several questions regarding the decision timeframe that the property owner must post the decision on his own property, including the enforcement mechanism. Ms. Ashley said that the statute is not clear; however, she asked that the Commission agree to the change and that she would clarify the posting requirement before the item is placed on Council's agenda for their consideration.

Ms. Carter suggested Ms. Ashley clarify the property owner posting requirement and send that clarification to the Planning & Zoning Commission members. If the Commission members are agreeable to the clarification, the ordinance could move forward to City Council for their consideration. If not, then the ordinance should be placed back on the Commission's agenda for further review.

Ms. Carter stressed the importance of the internal process, noting that as soon as the appeal of the zoning decision is received by the City Clerk, the process begins.

Vice-Chair Shriner and Ms. Carter pointed out several typographical errors in the draft ordinance presented to the Commission.

Chairman Goldstein opened the public hearing at 6:32 p.m. and when no one spoke, he then closed it at 6:32 p.m.

Based on the above findings and the analysis provided in the report, Ms. Carter moved to recommend approval of an amendment to Chapter 7 of the Code of Ordinances regarding changes to Board of Adjustment procedures and rules, including the additional amendment regarding the property owner's posting requirement, pending Commission approval prior to City Council consideration. This motion was seconded by Vice-Chair Shriner and carried unanimously on a 6-0 vote.

- (5) Ordinance amending Chapter 7 of the Code of Ordinances regarding changes to outdoor lighting standards to allow for updates to standards regulating LED lights.**

Chief Sustainability Officer Maggie Ullman said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regarding changes to outdoor lighting standards to allow for updates to standards regulating LED lights to better align the goals of reduced glare and dark sky concerns with energy efficient lighting goals.

In 2011, the Department of Public Works in support of the sustainability Master Plan, announced a multi-year plan to phase in new LED street lights. In order to support this change, a wording amendment was approved by P&Z in August 2012 stating that all new privately installed street lights would match the city's new LED street lighting standards as well as setting LED area lighting requirements.

Since the last lighting ordinance update, multiple projects including Plasticard Locktech, AB-Tech campus and Isaac Dickson Elementary have run into obstacles trying to utilize LED lighting and being in compliance with our LED standards. The two areas of conflict are with the 1) BUG (backlight, uplight and glare) standard and, 2) the maximum lumen output standards. Both of the aforementioned standards in the current ordinance present a conflict between supporting dark skies and public safety goals, and supporting goals for energy efficiency LED lighting.

While options for non-LED lights still remain, when choosing to use LED lights developers are running into issues with the BUG rating and lumen output requirements for area lighting. Additionally, new options for street lighting would necessitate a moderate increase in lumens to capitalize on advancements in efficiency. These standards are restrictive to the point that a project developer, in order to stay in compliance, would need to make a poor financial decision in order to choose LED lighting. The following scenarios describe the current choices for a project developer:

- a. Subscribe to Duke Energy Progress (DEP) lighting service where the utility assumes full responsibility for: design, capital costs, installation, and maintenance over time. The property owner then pays a flat monthly fee for this service. The project developer cannot currently choose this option because there are no fixtures that meet our ordinance standards offered by DEP.
- b. Establish permanent full responsibility for the lighting including: design, capital costs, installation, and maintenance over time. The lighting energy use is tied into the building electric meter and is charged under that rate. This option is not as desirable because it adds significant upfront costs to the project and in order to comply with the lighting ordinance standards the project developer is forced to utilize lower lumen fixtures. To deliver the same light levels, thereby adding cost and design challenges to the project.

The recommended solution is to adjust the area lighting BUG rating standard, lumen output standard and street lighting lumen output standard to ensure a larger variety of fixtures and the DEP offered fixtures comply, thus giving the project developer greater choice. The previous ordinance language was significantly stricter as it relates to dark sky concerns than the National Dark Sky Model Lighting Ordinance. The proposed changes are consistent with the National Dark Sky Model Lighting Ordinance recommendations for backlight, uplight, and glare as well as lumen output. (See recommended ordinance language below).

She then reviewed the following recommended ordinance language:

1. The allowable glare rating for site (area) lighting should be raised from the current G1 to G3, which is equivalent to what is allowed for street lighting on commercial roads. This would bring the overall site lighting BUG rating to a B3, U0, G3, which is still more restrictive than what is currently allowed for street lighting on commercial roads: B3, U3, G3.

Specifically, the text of section (i) 5 b. would read: "LED site lighting greater than 9,500 fixture lumens or taller than 18-feet shall have a maximum BUG rating of B3, U0, G3, unless otherwise excepted."

2. The maximum allowable fixture lumens for street and site lighting should be raised from 15,000 lumens to 20,000 lumens. Also, the words "or for non-residential uses" should be added when describing districts that should allow higher illumination levels that may be located within residential districts, such as schools and churches.

Specifically, here are the sections where this change would apply:

- a. Section (g) 8 b. would read: "The maximum number of fixture lumens shall not exceed 6,000 in residential districts and no more than 20,000 lumens in non-residential districts or for legal non-residential uses in residential districts, unless otherwise allowed or exempted
- b. Section (h) 4 c ii. would read: "In commercial districts – no greater than 20,000 fixture lumens, with exceptions noted in subsection (5) below.
- c. Section (h) 5 b. would read: "Use of LED street lights on commercial and major arterial roads over 20,000 fixture lumens are allowed to ensure public safety as deemed necessary by NCDOT and by the director of public works.

This amendment was reviewed by the Sustainability Advisory Committee on Energy and the Environment at their November 20, 2013, meeting where it was fully supported and recommended to the Planning & Zoning Commission for consideration.

On October 28, 2013, the Asheville Board of Adjustment reviewed and approved a variance request to use non-compliant LED lighting in a commercial parking lot. The variance is highly unusual in that the stated hardships were not due to physical constraints or features unique to the property (normally required) but were, instead, related to the lack of reasonable options available in the marketplace. The rationale, as provided during the Board deliberation, was that if the City was going to allow and promote the use of LED lights then the standard should not, or could not, be so restrictive as to preclude their use. The effect of granting this variance has created an unusual and unforeseen precedent that must be addressed - approving the amendment as proposed would address this precedent concern. The proposed LED lights approved by the Board of Adjustment would comply with the standards proposed.

Pros:

- Adjusts standards to allow energy efficient options for developers and property owners.
- Encourages the use of energy efficient fixtures.
- Maintain limits to discourage unsafe glare and support dark skies.

Con:

- Although still consistent with the National Dark Sky Model Ordinance, these changes do slightly relax the standards as it relates to public safety concerns regarding glare.

Staff recommends approval of the proposed wording amendment and finds that it is consistent with the City's adopted plans and goals.

Chairman Goldstein opened the public hearing at 6:42 p.m.

Mr. Jason Walls, Duke Energy Progress District Manager, spoke in support of the ordinance changes.

Ms. Patty Beaver, representing the Council of Independent Business Owners, asked for the Commissioner's approval because businesses are willing and want to meet the standards and this will help alleviate some of the conflicts.

Chairman Goldstein closed the public hearing at 6:44 p.m.

Based on the above findings and the analysis provided in the report, Vice-Chair Shriner moved to recommend approval of an amendment to Chapter 7 of the Code of Ordinances regarding changes to outdoor lighting standards to allow for updates to standards regulating LED lights. This motion was seconded by Chairman Goldstein and carried unanimously on a 6-0 vote.

Other Business

Chairman Goldstein announced the next meeting on January 16 2014, at 4:00 p.m. in the First Floor Conference Room in the City Hall Building. He noted that there would be a pre-meeting beginning at 3:30 p.m. on January 16, 2014.

Adjournment

At 6:45 p.m., Mr. Cannady moved to adjourn the meeting. This motion was seconded by Mr. Minicozzi and carried unanimously on a 6-0 vote.